IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 666 of 2001 (S/B)
(Old No. 2768/1985)

Sri Bishamber Dutt S/o Late Sri Jai Ram
Clerk, Grade II in the Quarter Master Section,
Indian Military Academy,
Dehradun. .....Petitioner

Vs.

1. The Indian Military Academy, Dehradun,
   through its Commandant,
   Dehradun.
2. The Secretary, Ministry of Defence,
   Government of India, New Delhi,
3. The Army Head Quarters,
   Ministry of Defence,
   Govt. of India, New Delhi.
4. The Assistant Labour Commissioners (Central),
   Block No. B21/6, Gurgaon Road,
   Barracks, New Delhi- II.
5. The Union of India. …… Respondents

Sri Rajendra Dobhal, Advocate for the petitioner.
Ms. Anjali Bhargava, Addl. Standing Counsel for the respondents.

Dated: 30th August, 2006

Hon'ble Rajesh Tandon, J.

Heard Mr. Rajendra Dobhal, the learned counsel for the petitioner and Ms. Anjali Bhargava, Addl. Standing Counsel for the respondents.

2. The petitioner has filed this writ petition praying for a writ of mandamus commanding the respondents to treat the petitioner as a permanent employee equivalent to the rank of Lower Division Clerk and pay his salary accordingly with retrospective effect together with all benefits and allowances.

3. Counsel for the petitioner has referred the decision of the Division Bench in the case of **Sri Arun Kumar Sharma Vs. The Indian Military Academy, Dehradun & others** in **Writ Petition No. 777 of 2001 (S/B)**, which was decided on 15.09.2003. The relevant portion of the said judgment is quoted below:-

> "The petitioner was appointed as temporary clerk on probation on a consolidated salary of Rs. 160/2 per month with effect from 2.9.1976. His services have been terminated after about 7 years. Therefore, the petitioner has come by way of writ petition under Article 226 of the Constitution of India.
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> 2. In this petition the petitioner has claimed that he was appointed as a Clerk in the Indian Military Academy, Dehradun. It is a case of the petitioner that he was appointed as a clerk in substantive vacancy and his services cannot be terminated without following Rules. He has, therefore, asked for reinstatement with all benefits. He has also claimed a declaration as permanent employee of Indian Military Academy and he has claimed salary from the date of termination of services till reinstatement. On the other hand as per counter filed on behalf of the Indian Military Academy, it has been pointed out that in all service units certain Regimental Employees are employed to perform functions for which Government staff is not provided for. One of such function is that of distribution of ration to the persons entitled to ration on payment. For this purpose certain recoveries are made from the ration card holders and out of this money some casual employees are paid. In the counter affidavit it has been pointed out that three persons were employed for this purpose on purely temporary basis. It was further pointed out that Indian Military Academy, at one point of time offered to the petitioner employment on regular basis subject to the petitioner agreeing to follow instruction No. 26. However, the petitioner refused to sign and abide by instruction No. 26. We have also examined payment of salary to the petitioner. The salary has been paid against the vouchers. Under the

aforesaid circumstances we do not wish to interfere under Article 226 of the Constitution."

4. In view of the above, liberty is given to the petitioner to move a fresh representation before the respondents expressing his opinion with regard to Instruction No. 26 of the Instructions. In case the petitioner makes such representation, the same may be considered by the respondents in accordance with law and following the Rules.

5. With the aforesaid observation, the writ petition stands disposed of.

(Rajesh Tandon, J.)
30.08.2006